

DRAFT

ISSUE:

Clarification of conformity requirements for TIP amendments.

REGULATORY CITATIONS:

23 CFR 450.326 Transportation improvement program: Modification. The TIP may be modified at any time consistent with the procedures established in this part for its development and approval. In nonattainment or maintenance areas for transportation related pollutants if the TIP is amended by adding or deleting projects which contribute to and/or reduce transportation related emissions or replaced with a new TIP, new conformity determinations by the MPO and the FHWA and the FTA will be necessary. Public involvement procedures consistent with Sec. 450.316(b)(1) shall be utilized in amending the TIP, except that these procedures are not required for TIP amendments that only involve projects of the type covered in Sec. 450.324(i).

40 CFR Sec. 93.104 Frequency of conformity determinations. (c) Frequency of conformity determinations for transportation improvement programs. (1) A new TIP must be demonstrated to conform before the TIP is approved by the MPO or accepted by DOT. (2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in Sec. 93.126 or Sec. 93.127.

RESOLUTION:

In nonattainment and maintenance areas subject to the transportation conformity requirements, TIP amendments require a conformity determination unless the amendment only adds or deletes exempt projects.

40 CFR 93.122(g) allows for a conformity determination on a TIP without a new regional emissions analysis if the requirements of that section can be met. Under certain circumstances, this provision could be used to make amendments involving non-regionally significant projects or to add or delete regionally-significant projects from the TIP. However, a formal conformity determination is still required by the MPO. In addition to the affirmative conformity determination by the MPO, the documentation should include the applicability of the 93.122(g) provisions and timely implementation of TCMs. Public involvement and financial constraint should be addressed in accordance with the 23 CFR Part 450.

Eliminate language such as “does not affect the conformity determination” and replace with a conformity determination was or was not required. Additionally, rather than “capacity-increasing” use exempt or non-exempt to help clarify whether a conformity determination is required.